Petition

81-1523

No.

Office-Supreme Court, U.S.
FILED
FEB 13 1982
ALEXANDER L. STEVAS,
CLERK

In the Supreme Court of the United States

October Term, 1981

THOMAS K. STEWART and SHELDON R. WAXMAN,

Petitioners,

vs.

SOCIALIST WORKERS PARTY, et al.,

Respondents,

vs.

JOSEPH GRUBISIC, et al.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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QUESTION PRESENTED

Did the Court of Appeals deny Stewart and his counsel due process of law in not allowing them to appeal a final appealable order?

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In the
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OCTOBER TERM, 1981

NO.

THOMAS K. STEWART and
SHELDON R. WAXMAN,

Petitioners,

VS.

SOCIALIST WORKERS PARTY, et al.,

Respondents,

VS.

JOSEPH GRUBISIC, et al.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Petitioners pray that a Writ of Certiorari be issued to review the judgment of the United States Court of Appeals for the Seventh Circuit entered on November 16, 1981.

OPINION BELOW

The "opinion" of the U.S. Court of Appeals for the Seventh Circuit is "unpublished". Therefore it is printed in full in the Appendix hereto; *Socialist Workers' Party, et al.* v. *Grubisic, et al.*, No. 81-1738 (7th Cir. Nov. 16, 1981).

JURISDICTION

Jurisdiction is predicated on Title 28 U.S.C. Section 1254(1); 62 Stat. 928. This appeal is being filed within 90 days of the Court of Appeals Order of November 16, 1981 as per 28 U.S.C. §2101(c).

STATEMENT

On April 10, 1981, an order was entered in the case of *Socialist Workers Party* v. *Joseph Grubisic, et al.* (Docket No. 75C3361, N.D. Ill.; Judge Leighton, presiding) providing that the deposition of non-party (petitioner herein) Thomas K. Stewart be taken, and further providing for attorney's fees as sanctions for discovery problems. Attorney's fees were awarded both against Stewart, and against petitioner Sheldon R. Waxman, his attorney. On May 10, 1981, an appeal was taken. On August 19, 1981, Appellant's Brief & Appendix were filed with the United States Court of Appeals for the Seventh Circuit.

On September 1, 1981, a motion to dismiss appeal for lack of jurisdiction was filed by the "City" defendants/appellees, and on September 3, 1981, petitioner, Thomas K. Stewart, filed his objection. Concurrently, on September 4, 1981, Stewart moved the District Court for the entry of a judgment order, pursuant to Rule 79, Federal Rules of Civil Procedure. That motion was granted that day; See Appendix.

Thereafter, on September 9, 1981, in an Order received by Stewart's counsel on September 11, 1981, the Court of Appeals granted the motion to dismiss the appeal.

On October 6, 1981, Stewart filed his timely motion to Reinstate the appeal; and on November 16, 1981, the Court of Appeals, without explanation, denied that motion.

REASON FOR GRANTING THE WRIT

THE COURT OF APPEALS DENIED STEWART AND HIS COUNSEL DUE PROCESS OF LAW IN NOT ALLOWING THEM TO APPEAL A FINAL APPEALABLE ORDER.

Stewart, and his counsel, have been denied the right to an appeal in violation of the due process clause of the Fifth Amendment to the United States Constitution.

Under the provisions of 28 U.S.C. Section 1291, Stewart had an absolute right to appeal to the Court of Appeals. It smacks of a violation of 42 U.S.C. 1985(2), to deny him that right. This is a rather notorious case, and it involves a guy (Stewart) that "blew the whistle" on the Chicago White House plumbers. See, *Stewart* v. *State of Illinois,* Cert. Pet. Docket #78-1293. See, also, *U.S., ex rel, Stewart* v. *Scott,* 501 F. Supp. 53 (N.D. Ill. 1980) and *People* v. *Stewart,* 383 NE 2d 1179 (Ill. App. Ct. 1978) *cert. denied* 441 U.S. 907 (1979).

This case involves an abuse by the Court of Appeals, in refusing to reinstate the appeal, filed by non-party deponent Stewart,* and his attorney, who has previously been involved in controversial cases; see, e.g., *Dema* v. *U.S. and David J. Feddor,* Cert. Pet., Docket #76-755; *Stout* v. *U.S.,* Cert. Pet., Docket #79-389; *Libertarian Party of Illinois* v. *Board of Election Commissioners of the City of Chicago, et al.,* Cert. Pet., Docket #78-1575; *Tabcor Sales Clearing, Inc.* v. *Dept. of Treasury,* Cert. Pet., Docket #81-979; *J. Richard Dema* v. *Internal Revenue Service,* Cert. Pet., Docket #81-981.

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* The Seventh Circuit had previously ruled that non-parties may appeal "final" discovery orders; see, e.g. *Socialist Workers Party, et al.* v. *Grubisic, et al.,* 619 F. 2d 641 (7th Cir. 1980) *cert. denied,* ---- U.S. ----.

Stewart filed a timely notice of appeal. To deny petitioners their right to appeal was to deny them procedural due process of law.

CONCLUSION

For the foregoing reasons, this Petition for Certiorari should be granted.

Respectfully submitted,

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Appendix

APPENDIX A

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

September 9, 1981.

Before

Hon. Wilbur F. Pell, Jr., Circuit Judge
Hon. William J. Bauer, Circuit Judge
Hon. Harlington Wood, Jr., Circuit Judge

SOCIALIST WORKERS PARTY, et al.,
Plaintiffs-Appellees,

No. 81-1738 vs.

JOSEPH GRUBISIC, et al.,
Defendants.

APPEAL OF:

THOMAS K. STEWART.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division

No. 75-C-3361

George N. Leighton, Judge

This matter comes before the court for its consideration upon the following documents:

1) The "MOTION TO DISMISS APPEAL FOR LACK OF JURISDICTION" filed herein on September 1, 1981 by counsel for the plaintiffs-appellees, City of Chicago;

2) The "STEWART'S OBJECTION TO MOTION TO DISMISS APPEAL FOR LACK OF JURISDICTION" filed herein on September 3, 1981 by counsel for the appellant.

On consideration whereof,

IT IS ORDERED that the plaintiffs-appellees' motion be GRANTED and this appeal from an order of the United States District Court for the Northern District of Illinois, Eastern Division is DISMISSED for lack of jurisdiction.

APPENDIX B

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

November 16, 1981

Before

Hon. Wilbur F. Pell, Jr., Circuit Judge
Hon. Robert A. Sprecher, Circuit Judge
Hon. William J. Bauer, Circuit Judge

SOCIALIST WORKERS PARTY, et al.,
Plaintiffs-Appellees,

No. 81-1738 vs.

JOSEPH GRUBISIC, et al.,
Defendants.

APPEAL OF: THOMAS K. STEWART.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 75 C 3361

Judge George N. Leighton

This matter comes before the court for its consideration upon the following documents:

1. The "MOTION TO REINSTATE APPEAL" filed herein on October 6, 1981, by counsel for Thomas K. Stewart.

2. The "RESPONSE TO DEPONENT-APPELLANT'S MOTION TO REINSTATE APPEAL" filed herein on November 3, 1981, by counsel for plaintiffs-appellees.

3. The "RESPONSE OF THE CITY OF CHICAGO TO MOTION TO REINSTATE APPEAL" filed on November 4, 1981, by counsel for the City of Chicago.

On consideration thereof,

IT IS ORDERED that the "MOTION TO REINSTATE APPEAL" is hereby DENIED.

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SOCIALIST WORKERS PARTY, et al.,

Plaintiffs,

v.

JOSEPH GRUBISIC, et al.,

Defendants.

No. 75-C-3361
Hon. George N. Leighton, *Judge*.

STEWART'S MOTION FOR COURT TO ORDER CLERK TO ISSUE RULE 79 JUDGMENT ORDER IN ORDER TO ALLOW APPEAL FROM A FINAL ORDER

NOW COMES the Intervenor, THOMAS STEWART, by and through his attorney, SHELLY WAXMAN, and moves for this Court to order the Clerk to issue a Rule 79 Judgment Order in order to allow an appeal from a final order for the following reasons:

1. On August 1, 1981 (corrected on August 13, 1981), this Court filed an Order awarding joint sanctions against Stewart and his counsel for $575.00.

2. Although repeatedly requested by Mr. Stewart, this Court has not issued directions for the Clerk to issue a final Rule 79 Judgment Order.

3. An appeal cannot be taken from a non-final Order. See, *Rappaport* v. *U.S.*, 557 F.2d 605 (7th Cir., 1977).

WHEREFORE, Stewart prays for the entry of an appropriate Order.

Respectfully submitted,

THOMAS STEWART

By: /s/ *Shelly Waxman*
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His Attorney

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APPENDIX D

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Name of Presiding Judge, Honorable George N. Leighton

Cause No. 75-C-3361 Date September 4, 1981

Title of Cause—SOCIALIST WORKERS PARTY, et al., v. JOSEPH GRUBISIC, et al.,

Brief Statement of Motion—STEWART'S MOTION FOR COURT TO ORDER CLERK TO ISSUE RULE 79 JUDGMENT ORDER IN ORDER TO ALLOW APPEAL FROM A FINAL ORDER

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Stewart's motion for court to order clerk to issue judgment order in order to allow appeal is granted.

/s/ Leighton, J.